S.B.Civil Sales Tax Revision No.1382/99
A.C.T.O. Vs. IQBAL SINGH.

Date of Order: 26.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha for the petitioner.

...

Brief facts of the case are that on 6.7.1988, in front of D.T.O. Office, a vehicle in possession of one Som Singh, being truck chassis no. 364073867372 was found by the Commercial Tax Officer. The vehicle was new and when the relevant documents including the Form ST-18, were demanded by the assessing authority, the person in-charge of the vehicle informed that the said truck chassis was purchased locally from M/s Union Motors. The said person sought time from the assessing authority so that he may produce bill and the relevant form. The assessing authority enquired from the alleged seller and found that the said truck chassis was not sold by the firm M/s Union Motors. The vehicle was, therefore, seized under Section 22A(5) and (6) and a notice was issued to the assessee under Section 22(7) of the Rajasthan Sales Tax Act, 1954. The notice was served upon said Som Singh and in reply to the notice, he stated that in fact the said truck chassis belongs to Iqbal Singh s/o Gurdayal Singh and Surjan Singh s/o Harvel Singh of Sri Ganganagar. He informed that he is only agent of transporter. Said Som Singh also submitted an affidavit in support of his contention. Even Iqbal

Singh also submitted his affidavit stating therein that vehicle belongs to him. However, Iqbal Singh stated that he in fact brought the vehicle on hire from Chandigarh. Again notice was issued to said Iqbal Singh under Section 22A(7) on 22.7.1988. In response to the notice dated 22.7.1988, Iqblal Singh's representative appeared and prayed for time to produce Form ST-18. The time was granted by the assessing authority. It was contended by the representative of said Iqbal Singh that the assessee is not falling in the definition of dealer or businessman. He is owner of the vehicle, therefore, no penalty can be imposed upon him for violation of non-production of the relevant documents at the relevant time.

The assessing authority, after considering the Section 22-C observed that as per the sub-section (1) of Section 22-C of the Act of 1954, any person, who brings, imports or otherwise receives any goods from outside the State, is required to obtain the prescribed declaration on payment of prescribed fee if the value of the goods is more than 1000/-. It will be worthwhile to mention here that the assessing authority also observed that as per the proviso to sub-section (1) of Section 22-C, there is a presumption of purchase of the goods within the State in case the person who brought or imported or otherwise received the goods otherwise than in connection with business and he failed to obtain such form of declaration. The assessing authority also held that since assessee failed to prove that the vehicle was purchased at

Chandigarh and he did not produce form ST-18, therefore, it is clear case of violation of Section 22-A(3) of the Act of 1954.The assessing authority, therefore, imposed penalty @ 12% on the cost of the value of the truck chassis amounting to Rs.31,839/- by order dated 26.7.1988.

The assessee preferred appeal, which is allowed by the Deputy Commissioner(Appeals),Commercial Taxes, Jodhpur, vide order dated 30.5.1989. The appellate authority observed that the vehicle reached within the State of Rajasthan at Sri Ganganagar. The vehicle was ready for presentation before the transport office for its registration. At that time, the concerned Commercial Tax Officer, demanded the documents and when the documents were not produced, imposed the penalty under Section 22-A(7). In the opinion of the appellate authority, since the vehicle reached to the destination and the transit period comes to an end, therefore, the penalty imposed under Section 22(7) was illegal.

Being aggrieved against the order of the appellate authority dated 30.5.1989, the revenue preferred appeal, which too was dismissed by the Rajasthan Sales Tax Tribunal, Ajmer vide its order dated 5.4.1995. The Tax Board also reiterated the reasons given by the first appellate authority.

The learned counsel for the appellant submits that it appears from the order passed by the appellate authority as well as the Tax Tribunal that both the authorities did not even consider the reasons

given by the assessing authority and proceeded on absolutely erroneous assumption of law. Section 22-C clearly provides that “any person”, who brings, imports or otherwise receives any goods from outside the State, as notified by the State Government, of value of Rs.1000/- or more, for use, consumption or disposal, within the State, is required to obtain prescribed form of declaration and in case, he fails to obtain such declaration, the proviso to sub-section (1) of Section 22-C provides that in that situation, there is a presumption of purchase of the goods within the State. The sub-section (2) of Section 22-C clearly provides that such declaration is required to be carried with the goods and presented at the entry checkpost alongwith other documents prescribed under section 22-A and it also provides that provision of Section 22-A shall apply to such import.

I considered the submissions of the learned counsel for the petitioner and perused the facts of the case.

It is clear from the reasons given by the appellate authority as well as by the Tax Tribunal that both the authorities did not consider the facts of the case nor they consider the reasons given by the assessing authority for imposition of the penalty. Firstly the person who was in-charge of vehicle, before the vehicle could have been registered as per the provisions of the Motor Vehicles Act, was stopped by the concerned Commercial Tax Officer and the person incharge of the

vehicle stated before the concerned Commercial Tax Officer that the vehicle was purchased within the State from M/s Union Motors. He sought time to produce the relevant documents but did not produce. The assessing authority found from the alleged seller that the vehicle was not sold by the said seller firm. The assessee thereafter submitted his affidavit stating therein that he brought the vehicle from Chandigarh and the vehicle was taken by him on hire. The stand was again changed and on 22.7.1988, the assessee's representative sought time to produce the Form ST-18. The objection raised before the assessing authority thereafter was that he is not falling in the definition of businessman, therefore, the penalty cannot be imposed. The another ground taken by the assessee was that by purchasing the vehicle from outside the State of Rajasthan, the assessee has not evaded the tax. It was nowhere the case of the assessee that he was not given reasonable opportunity as required under sub-section (7) of Section 22-A of being heard before demanding the relevant documents, as required by Section 22-C read with Section 22-A. Admittedly, the relevant documents were not produced by assessee. The assessee's stand before the assessing authority clearly indicates his clear intention was to evade the tax. It was never the case of the assessee that his vehicle was not stopped at checkpost or the vehicle was not seized when it entered the State territory. Vehicle was new. The apprehending vehicle at or near D.T.O.

Office was irrelevant when it was not the case of the assessee that vehicle was not in transit. There is no reference of Section 22-C in the orders of the two courts below nor the finding recorded by the assessing authority has been reversed by any of the appellate authorities. The reasons given by the appellate authority proceeded on absolutely wrong application of the provisions of law and further in ignorance of Section 22-C. Therefore, the order passed by the Tax Tribunal dated 5.4.1995 and the Deputy Commissioner(Appeals),Commercial Taxes, Jodhpur dated 30.5.1989 deserve to be set aside and hence set aside and the order of the assessing authority is restored.

The revision petition is allowed accordingly.

(PRAKASH TATIA),J.

mlt.